

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OLIN CORPORATION,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT LLOYD'S
LONDON and CERTAIN LONDON MARKET
INSURANCE COMPANIES,

Defendants.
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No. 18-8197
~~UNREDACTED~~
COMPLAINT

Jury Trial Demanded

COMPLAINT

Plaintiff Olin Corporation for its Complaint against Defendants alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking to resolve disputes under insurance policies and a settlement agreement concerning insurance coverage for certain environmental claims and for relief to remedy Defendants' breaches of the insurance policies and settlement agreement.

PARTIES

2. Plaintiff Olin Corporation ("Olin") is a corporation organized under the laws of Virginia, having its principal place of business in St. Louis, Missouri. Olin is licensed to do business and is doing business in New York.

3. Upon information and belief, Defendants Certain Underwriters at Lloyd's London and Certain London Market Insurance Companies (collectively "London") are comprised of (i) individuals, all or most of whom are residents and subjects of the United Kingdom of Great Britain and Northern Ireland, or corporations, all or most of which are organized pursuant to the laws of the United Kingdom, (ii) insurers that severally subscribed to certain insurance policies in favor

of Olin and its predecessors in interest, and (iii) insurers that entered into the contract at issue in this action, the Settlement Agreement (as defined below) between Olin and London. In those policies, London agreed to submit to the jurisdiction of any court of competent jurisdiction within the United States of America at the request of the insured (*i.e.*, Olin), and to comply with all requirements necessary to give such court jurisdiction. In the Settlement Agreement (as defined below) between Olin and London, London also agreed that any coverage litigation between Olin and London would proceed before a court of competent jurisdiction in New York, New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties named in this complaint pursuant to 28 U.S.C. § 1332(a)(1). As previously represented to Olin by counsel for London, there is complete diversity of citizenship between Olin and London, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (c).

FACTS

London's Insurance Obligations To Olin

6. Over the last several decades, Olin has spent hundreds of millions of dollars remediating environmental damage at more than 100 sites across North America. The costs and liabilities Olin incurred in connection with that damage were insured by London and various other insurers under policies of comprehensive general liability insurance and umbrella and excess liability insurance. The policies issued by London to Olin at issue in this action are listed on the attached Schedule A (collectively "London Policies").

7. Under the London Policies, London undertook obligations to (a) defend (or indemnify Olin for the defense of) any action or proceeding against Olin alleging damages on account of potentially-covered bodily injury, property damage, or personal injury; or (b) pay, or to

indemnify Olin for, all sums within respective policy limits which Olin shall become legally obligated to pay on account of such bodily injury, property damage, or personal injury; or (c) both.

8. Certain claims have been asserted against Olin in respect of the Morgan Hill manufacturing site (the "Morgan Hill Claims" and the "Morgan Hill Site," respectively), and certain liabilities, arising out of the Morgan Hill Claims and involving the Morgan Hill Site have been imposed upon Olin (the "Morgan Hill Liabilities").

9. The Morgan Hill Claims allege, and the Morgan Hill Liabilities involve, damages on account of bodily injury or property damage sustained during the policy periods of the respective London Policies for the Morgan Hill Site.

10. Olin requested coverage for the Morgan Hill Claims and Morgan Hill Liabilities pursuant to the London Policies and the Settlement Agreement (as defined and discussed below), but London denied or otherwise sought to evade Olin's Morgan Hill Claims and Morgan Hill Liabilities (or London was caused to do so by its reinsurers, administrators, handlers, or other interests).

The Olin-London Settlement Agreement

11. Olin has been litigating related environmental insurance coverage claims for decades in the United States District Court for the Southern District of New York against London and other insurers that issued policies covering certain environmental damage claims made by Olin ("1984 Action"). Olin filed the 1984 Action in 1984, and it is ongoing. The 1984 Action is currently captioned *Olin Corporation v. Lamorak Insurance Company, et al.*, Case No. 84 Civ. 1968. Through the course of the 1984 Action, Olin and London entered into a Confidential Settlement Agreement and Release, dated July 31, 2009 ("Settlement Agreement"), to settle or otherwise address Olin's coverage claims against London with respect to multiple sites at issue in the 1984 Action. The Settlement Agreement released some, but not all of Olin's claims against

London. Accordingly, in reliance on London's contractual promises in the Settlement Agreement, in 2010 Olin dismissed its claims against London in the 1984 Action with prejudice as to certain claims and without prejudice as to certain other claims.

12. The Settlement Agreement, in Section VII.B, provides for an arrangement as to certain claims not released by the Settlement Agreement:

Provided always that there is coverage under the London Policies (excluding for the avoidance of doubt the Buy-Back Policies) for the Claims referenced in this Section VII below that are not otherwise released by this Agreement, Olin and London Market expressly agree:

* * *

B. Pollution Claims and Other NRD Claims

Subject to the proviso above relating to coverage, the following Claims shall be subject to the agreement between the Parties that is set forth in this Paragraph B:

- Any Claim to London Market by Olin relating to Pollution Claims, that: (a) is not otherwise released in Section IV, Paragraph A and C of this Agreement and (b) is not a Niagara Appeal Sites Claim; and
- Bodily injury/personal injury (including death) Pollution Claims for non-DJ Sites; and,
- NRD Claims relating to a Non-DJ Site; and,
- Any Pollution Claims relating solely to the Operable Unit 2 aspect of McIntosh, Alabama.

All such Claims shall be the subject of the following agreement between the Parties:

- (i) In the case only of any Pollution Claim (including a Pollution Claim relating solely to the Operable Unit 2 aspect of McIntosh, Alabama), Olin shall first deduct from the loss that it has incurred any and all payments made by Olin and/or its agents prior to the Execution Date.

- (ii) As to each Claim subject to this Section VII Paragraph B, Olin shall deduct the sum of Ten Million United States Dollars (\$10,000,000) from the loss that it has incurred.
- (iii) As to each Claim subject to this Section VII Paragraph B, Olin and London Market agree that the terms and conditions of the London Policies (excluding for the avoidance of doubt the Buy Back Policies) shall apply as written except as provided in Section VII, Paragraphs C, D and E below.

COUNT I – BREACH OF CONTRACT

- 13. The foregoing paragraphs are incorporated by reference as though set forth herein.
- 14. With respect to the Morgan Hill Site, the Morgan Hill Claims and Morgan Hill Liabilities are subject to Section VII.B of the Settlement Agreement, which expressly provides that such Morgan Hill Claims and Morgan Hill Liabilities would not be released by the Settlement Agreement.
- 15. Olin has complied with all terms of the Settlement Agreement and all terms of the London Policies covering the Morgan Hill Claims and Morgan Hill Liabilities.
- 16. All conditions precedent to London's duties to perform its obligations to Olin under the London Policies and the Settlement Agreement in respect of the Morgan Hill Claims and Morgan Hill Liabilities have been met.
- 17. London has breached one or more of the London Policies and the Settlement Agreement by failing to perform its obligations to Olin under the London Policies and the Settlement Agreement with respect to the Morgan Hill Claims and Morgan Hill Liabilities.
- 18. As a result of London's breach or breaches, Olin has paid and incurred costs of defense and damages by reason of the Morgan Hill Claims and Morgan Hill Liabilities for which

costs and damages Olin is entitled to be reimbursed under the London Policies and the Settlement Agreement.

19. Olin will continue to pay and incur costs of defense and damages by reason of the Morgan Hill Claims and Morgan Hill Liabilities for which costs and damages Olin is entitled to be reimbursed under the London Policies and the Settlement Agreement.

20. Olin is entitled to judgment against London as to the Morgan Hill Claims and Morgan Hill Liabilities in the amount of the costs and damages paid and incurred, as well as costs and damages to be paid and incurred in the future, less any applicable deductible, and in accordance with the terms of the London Policies and the Settlement Agreement, including limits.

COUNT II - DECLARATORY JUDGMENT

21. The foregoing paragraphs are incorporated by reference as though set forth herein.

22. London has refused and is refusing to perform its obligations under the London Policies and the Settlement Agreement with respect to the Morgan Hill Claims and Morgan Hill Liabilities.

23. An actual controversy and uncertainty exists between the parties with respect to the Morgan Hill Site sufficient for this Court, pursuant to 28 U.S.C § 2201, to issue declaratory relief and declare the rights and obligations of the parties under the London Policies and the Settlement Agreement. Declaratory relief is an appropriate means of resolving this controversy before any further disputes, claims, harms, or injuries arise.

24. Accordingly, this Court should issue declaratory relief in favor of Olin and against London declaring that London is required to indemnify Olin for all costs and damages paid and incurred, as well as all costs and damages to be paid and incurred in the future, with respect to the Morgan Hill Claims and Morgan Hill Liabilities, less any applicable deductible, and in accordance with the terms of the London Policies and the Settlement Agreement, including limits.

* * *

WHEREFORE, Olin respectfully requests that this Court enter judgment in its favor and against London and that this Court award Olin the following relief;

A. Declaratory relief in favor of Olin and against London declaring that London is required to indemnify Olin for all costs and damages paid and incurred, as well as all costs and damages to be paid and incurred in the future, with respect to the Morgan Hill Claims and Morgan Hill Liabilities, less any applicable deductible, and in accordance with the terms of the London Policies and the Settlement Agreement, including limits;

B. Damages, including but not limited to compensatory and consequential damages, as a result of London's breaches of the Settlement Agreement and the London Policies with respect to the Morgan Hill Site, in amounts to be proven at trial;

C. Reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial;

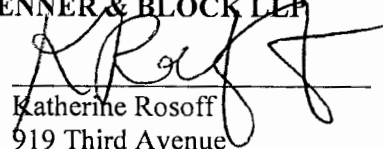
D. Interest according to law; and

E. Such other and further relief as this Court deems just and proper.

Dated: September 7, 2018
New York, New York

JENNER & BLOCK LLP

By:


Katherine Rosoff
919 Third Avenue
New York, NY 10022
(212) 891-2584 (telephone)
(212) 891-1699 (facsimile)
krosoff@jenner.com

and

Peter J. Brennan
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350 (telephone)
(312) 527-0484 (facsimile)
pbrennan@jenner.com

Attorneys for Plaintiff Olin Corporation

Exhibit A

SCHEDULE A

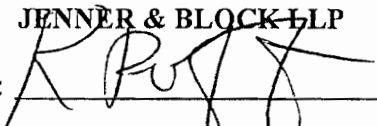
LIST OF OLIN CORPORATION INSURANCE POLICIES IN SUIT

1/1/1953 – 2/1/1954	LONDON MARKET INSURERS	K17459
2/1/1954 – 6/1/1955	LONDON MARKET INSURERS	K23386
2/1/1954 – 6/1/1955	LONDON MARKET INSURERS	K23387
4/19/1954 – 6/1/1955	LONDON MARKET INSURERS	K25651
6/1/1955 – 1/1/1958	LONDON MARKET INSURERS	K32571
6/1/1955 – 1/1/1958	LONDON MARKET INSURERS	K32572
6/1/1955 – 1/1/1958	LONDON MARKET INSURERS	K32573
8/13/1956 – 3/1/1961	LONDON MARKET INSURERS	K41819
5/1/1957 – 3/1/1961	LONDON MARKET INSURERS	K44076
5/9/1957 -- 3/1/1961	LONDON MARKET INSURERS	K44077
1/1/1958 – 3/1/1961	LONDON MARKET INSURERS	K51633
1/1/1958 – 3/1/1961	LONDON MARKET INSURERS	K50932
1/1/1958 – 3/1/1961	LONDON MARKET INSURERS	K51634
10/8/1959 – 10/8/1962	LONDON MARKET INSURERS	59-5622
10/8/1959 – 10/8/1962	LONDON MARKET INSURERS	C2192
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	K66570
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	CU1036
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	CU1037
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	K66571
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	K66572
3/1/1961 – 2/1/1964	LONDON MARKET INSURERS	K66573
2/1/1964 – 1/1/1967	LONDON MARKET INSURERS	CU3098
2/1/1964 – 1/1/1967	LONDON MARKET INSURERS	CU3099
1/1/1967 -- 1/1/1970	LONDON MARKET INSURERS	S6152

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Olin demands trial by jury on all issues so triable.

Dated: September 7, 2018
New York, New York

JENNER & BLOCK LLP
By: 
Katherine Rosoff
919 Third Avenue
New York, NY 10022
(212) 891-2584 (telephone)
(212) 891-1699 (facsimile)
krosoff@jenner.com

and

Peter J. Brennan
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350 (telephone)
(312) 527-0484 (facsimile)
pbrennan@jenner.com

Attorneys for Plaintiff Olin Corporation